

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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Clarita Lehman,

Plaintiff,

V.

Director & Chief Executive Officer of the  
Defense Commissary Agency c/o William F.  
Moore, et al.,

### Defendants.

Case No. 2:22-cv-00939-RFB-BNW

Order

Director & Chief Executive Officer of the Defense Commissary Agency c/o William F. Moore, et al.,

10 Defendants.

12 Before the Court is Defendants' motion to compel. ECF No. 56. Plaintiff filed a response  
13 and Defendants replied. ECF Nos. 61 and 62. For the reasons explained below, the Court grants  
14 the motion in part and denies the motion in part.

## I. Background

The instant case stems from Plaintiff's allegations that Defendants failed to provide accommodations under the Rehabilitation Act of 1973.

Defendants request that the Court to compel a full response to the interrogatories and requests for production that have been propounded upon Plaintiff. They also seek fees as a result of having to bring this motion.

Plaintiff filed a response but does not address the arguments made by Defendants in their motion.

The parties are familiar with the arguments. As a result, the Court repeats them here only as relevant to the order.

## II. Legal standards

Discovery is broad. *Jackson v. Montgomery Ward & Co.*, 173 F.R.D. 524, 528 (D. Nev. 1997). Parties may obtain discovery on any nonprivileged matter relevant to any party's claim or defense and proportional to the needs of the case. FED. R. CIV. P. 26(b)(1). The court has broad

1 discretion to permit or deny discovery, and its decision will not be disturbed "except upon the  
2 clearest showing" that the denial "results in actual and substantial prejudice to the complaining  
3 litigant." *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002).

4 If a party resists discovery, the requesting party may file a motion to compel. *See FED. R.*  
5 CIV. P. 37(a)(1). The motion must include a threshold showing that the requested information  
6 falls within the scope of discovery under Rule 26. *Sanhueza v. Lincoln Technical Instiute, Inc.*,  
7 2014 WL 6485797, at \*2 (D. Nev. Nov. 18, 2014). "The party opposing discovery has the burden  
8 of showing that the discovery is irrelevant, overly broad, or unduly burdensome." *Fosbre v. Las*  
9 *Vegas Sands Corp.*, 2016 WL 54202, at \*4 (D. Nev. Jan. 5, 2016).

10 Local Rule 7-2(d) provides, in pertinent part, that "the failure of an opposing party to file  
11 points and authorities in response to any motion...constitutes a consent to the granting of the  
12 motion." LR 7-2(d).

### 13 III. Analysis

14 At the outset, this Court notes that the discovery requests at issue meet the threshold  
15 showing under Rule 26. Next, the court notes that Plaintiff has not addressed any of the  
16 arguments raised by Defendants. As a result, she has consented to the granting of Defendants'  
17 request. LR 7-2(d).

#### 18 a. Interrogatories

19 At issue are interrogatories 2-5, 7-12, and 17-21. Plaintiff is ordered to fully answer each  
20 of these interrogatories within 30 days of this order.

21 While it is not clear what objections plaintiff is standing on given that she has not  
22 addressed them in her response, the Court makes the following remarks:

23 (1) Plaintiff cannot object on the basis of privacy when she is putting her disability at  
24 issue in the case. Parties can waive their privacy right in their medical history by putting that  
25 medical history at issue in a case or when it is directly relevant to the litigation. *See EEOC v*  
26 *Cheesecake Factory, Inc.*, 2017 WL 3887460 at \*7 (W.D. Wash. Sept. 6, 2017) (summarizing  
27 district court decisions finding "the right to privacy in medical records is waived when the  
28 plaintiff's medical condition is 'at issue' in the lawsuit.")

(4) "See docket" or providing a list of docket citations is not responsive.

9       Lastly, the court notes Plaintiff has partially answered some of the interrogatories. The  
10 parties are ordered to meet and confer within 10 days of this order to discuss what is missing from  
11 each of these responses.

**b. Requests for production**

13       Also at issue are requests for production 1-14. Plaintiff's responses direct defendants to take a  
14      look at the docket. Such responses do not comply with the rules of civil procedure. Plaintiff is  
15      ordered to provide a full response to each of these requests within 30 days of this order. To the  
16      extent Plaintiff needs clarification regarding these requests, she is to meet and confer with  
17      defendants within 10 days of this order.

18 || c. Fees

19 Rule 37(a)(5) allows the Court to order Plaintiff to pay Defendants attorney fees for having to  
20 file the instant motion unless, as applicable here, other circumstances make the award of the  
21 payment unjust. The Court, in its discretion, finds that the award of fees—at this stage—would be  
22 unjust given each of the parties' relative positions. The Court may reach a different conclusion  
23 should this same conduct be repeated in the future.

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#### IV. Conclusion

Defendants' motion at ECF No. 56 is GRANTED in part and DENIED in part. The parties shall meet and confer within 10 days of this order and Plaintiff shall provide responses within 30 days of this order.

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6 DATED: May 21, 2024.

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Brenda Weksler  
Brenda Weksler  
United States Magistrate Judge

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